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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,292	07/08/2003	Steven Hartman	14391	7384
293 7590 07/17/2007 Ralph A. Dowell of DOWELL & DOWELL P.C. 2111 Eisenhower Ave Suite 406 Alexandria, VA 22314				
			EXAMINER WOLLSCHLAGER, JEFFREY MICHAEL	
			ART UNIT 1732	PAPER NUMBER
			MAIL DATE 07/17/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/614,292

Applicant(s)

HARTMAN, STEVEN

Examiner

Jeff Wollschlager

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 4, 5, 7, 8 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 4, 5, 7, 8 and 17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 13, 2007 has been entered.

### ***Response to Amendment***

Applicant's amendment to the claims filed April 13, 2007 has been entered. Claims 1, 4 and 5 are currently amended. Claims 2, 3, and 9-16 have been canceled. Claim 17 is new. Claims 1, 4, 5, 7, 8 and 17 are pending and under examination.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 4, 5, 7, 8 and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites that the coating material is a "non-foam coating material". There does not appear to be support for this limitation in the original disclosure. In the

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REMARKS filed July 24, 2006 applicant argues that there is support for the limitation, as follows:

Additionally, it is clear in the original specification that the coating material does not have to be a foam material. At para. 0044 of the specification as originally filed, it is stated:

*"The combination of the first foam material and coating material exits extrusion apparatus 10 at egress 54 of extrusion die 50. As the combination exits, it expands due to the active foaming agent mixed in the first foam material "* (emphasis added)

Also, with reference to Fig. 6, it is apparent that the helical stripe is only a surface covering and does not extend into the body of the article, and thus is not depicting a coating, which is a foaming material.

The examiner does not agree with the conclusion that the original specification supports a claim limitation that excludes foam coating materials. The examiner also points to the same paragraph of the instant specification (US 2005/0006804, paragraph [0044]): "Conveniently, the coating material may be formed from material that has suitable expansion characteristics, so that the coating material expands at the same rate as the foam material.". The original disclosure is generic regarding the coating material and does not reasonably convey possession of a non-foam coating material. Said differently, the original disclosure does not appear to support a limitation that excludes a foam coating material. It is the examiner's position that the original disclosure does not support the claimed limitation (i.e. the coating material is a non-foam material) as required by the first paragraph of 35 U.S.C. 112.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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Claims 1, 4, 5, 7, 8 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garner (US 3,378,628) in view of Stocker (US 2,779,970) or Dugan (US 5,500,173).

Regarding claims 1 and 5, Garner teaches a method of forming an insulated telephone wire wherein a bare conductor wire (12) is coated with a foam material (14) and the combination is urged/fed to an extrusion channel (34) such that an outer surface of the foam material is within the channel (Figure 6). Garner further teaches feeding a plurality of non-foam coating materials (21, 22, 23) that are intrinsically "compatible" with the foam and that flow along an interior wall of the die (Figure 2; Figure 6) such that each of the non-foam materials coats the wire/foam combination in a manner that each of the non-foam materials occupies a fraction of the perimeter of the outer surface of the wire/foam combination (Figure 4). Additionally, Garner employs a rotating die (36) to provide a helical band/strip on the extruded wire/foam combination (Figure 1, Figure 6; Abstract; col. 1, line 65-col. 2, line 10; col. 3, lines 1-22; col. 4, lines 22-70; col. 5, lines 6-16). Garner does not teach employment of an annular reservoir as claimed.

However, each of Stocker (Figures 1-3) and Dugan (Figure 1; Figures 2a, 2b; col. 2, lines 55-col. 3, line 5) disclose methods of extruding articles with striped/helical portions comprising multiple materials through utilization of annular reservoirs for distributing the material to the die.

Therefore it would have been *prima facie* obvious to one having ordinary skill in the art at the time of the claimed invention to have modified the method disclosed by Garner and to have employed the distribution means/annular reservoirs disclosed by either of Dugan or Stocker, for the purpose, as suggested by Stocker of providing a better seal between the stationary and rotating parts and to ensure the colors do not run together (col. 1, lines 22-32) or as suggested

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by Dugan of utilizing an inexpensive, and easy to clean, inspect and reuse flow distributor (col. 2, lines 55-62).

As to claim 4, Dugan (Figure 1 (23) and (21)) and Stocker (Figure 2; Figure 3 (21), (22), (15) (16)) disclose a plurality of spaced flows and Garner discloses a visible helical band (Figure 1).

As to claims 7 and 8, Garner discloses a polyethylene foam material and coatings of different colors (Figure 1 and Figure 3). Garner does not expressly disclose the expansion factor of the polymer. However, the examiner notes that the combination discloses the same claimed process steps and employs the same claimed materials. As such, it follows that the combination would achieve/realize the same claimed physical properties and effects. Furthermore, expansion ratios of foamable thermoplastics on the order of 10-50 times are well known in the molding art and are dependent upon the amount of blowing agent used and the foam cell size desired. At the time of invention a person of ordinary skill in the art would have found it obvious to have expanded a foamable thermoplastic material by a factor of 10-50 times, as is commonly practiced in the art, in the process of Garner, and would have been motivated to do so in order to form a desirable light weight foamed extrudate.

As to claim 17, Dugan (Figure 1 (23) and (21)) and Stocker (Figure 2; Figure 3 (21), (22), (15) (16)) disclose a plurality of spaced flows from first and second annular spaces and Garner disclose a plurality of visibly distinct helical bands (Figure 1).

### ***Response to Arguments***

Applicant's arguments filed April 13, 2007 have been considered but are moot in view of the new ground(s) of rejection.

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**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff Wollschlager whose telephone number is 571-272-8937. The examiner can normally be reached on Monday - Thursday 7:00 - 4:45, alternating Fridays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JW

Jeff Wollschlager  
Examiner  
Art Unit 1732

July 12, 2007

  
CHRISTINA JOHNSON  
SUPERVISORY PATENT EXAMINER  
7/12/07